IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2006

Coram :

THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.4 of 2004

Commissioner of Income Tax
Chennai. ..Appellant

Vs

M/s.Apcom Computers (P) Ltd.
Chennai ..Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras, 'C' Bench, dated 9.5.2003 in I.T.A. No.2693/Mds/94 for the assessment year 1991-92. against the order of the Commissioner of Income Tax Appeals III Madras dated 04.10.1994 and made in Appeal No. 70/93-94 for the Assessment year 1991-92 against the order of the Deputy Commissioner of Income tax Special RAnge III Madras 34 dated 24.12.1993 and made in G1/PA NO. 47-066-CY-3778 for the Assessment year 1991-1992

For Appellant : Mr.J.Naresh Kumar

For Respondent : Mr.V.D.Gopal

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JUDGMENT
(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

The present appeal is filed under Section 260A of the Income Tax Act, 1961 by the revenue, in I.T.A. No.2693/Mds/94 against the order passed by the Income Tax Appellate Tribunal, Madras, 'C' Bench for the assessment year 1991-92. When the matter came up for hearing on 19.1.2004, this court admitted the case formulating the following substantial questions of law.

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"(1) Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition made to the closing stock, in respect of the difference between value of the stock reported to the bank and the income tax return?

(2) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the value of stock as reported by the assessee to its bank cannot be added to the value of the closing stock?

(3) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee can adopt one stock value for the bank purpose and other for the income tax purpose."

2. The brief facts leading to the above questions of law are as under:

The assessee is a Private Limited Company. The assessee derives income from manufacture of tape back up units for personal computers and computers. The relevant assessment year 1991-92 and the corresponding accounting year ended on 31.3.1991. The assessee filed Return of income on 19.12.1991 disclosing a total income of Rs.11,62,170/-. Later Return was processed under Section 143(1)(a) of the Income-tax Act (hereinafter referred to as the "Act") determining the total income at Rs.16,29,408/-. Subsequently, notice under Section 143(2) of the Act, was issued. The Assessing Officer completed the assessment under Section 143(3) and determined the total income at Rs.16,46,620/-. While completing the assessment, the Assessing Officer made an addition to the closing stock at Rs.6,16,950/- being the difference in value of the stock disclosed to the bank and disclosed in the accounts for the purpose of Income-tax Assessment. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) allowed the appeal and set aside the order of the Assessing Officer. Aggrieved by that order, the Revenue filed an appeal to the Income Tax Appellate Tribunal (hereinafter referred to as the "Tribunal"). The Tribunal dismissed the appeal filed by the Revenue and confirmed the order of the C.I.T.(A).

3. Learned Standing Counsel appearing for the Revenue, submitted that the assessee had, in order to obtain higher loan facilities, inflated its stock figure in the statement given to the bank and hence the statement should be accepted. Hence the Assessing Officer is right in adding the difference between the

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two figures to the total income of the assessee.

4. Learned counsel appearing for the assessee submitted that for the purpose of bank loan, stock statement was given on estimate basis. The assessee maintained day to day accounts on production and the declared closing stock for assessment purpose, was based on actual physical verification. Hence, the estimated value of the stock given to the bank cannot be taken as the correct value of stock.

5. Heard the counsel. Any addition on account of difference in stock can be made only on adequate materials, but not arbitrarily. Admittedly, there was a difference between the value of closing stock declared to the bank and to the Income-tax authorities. There is no dispute that the assessee was maintaining books of account on day to day production. The assessee, in the present case, has taken the actual physical stock for the purpose of declaring closing stock to the Income-tax authorities. Further the purchases and sales were supported by vouchers and the Assessing Officer had not pointed out any suppression of sales or purchases. There was a finding by the authorities below that the statement given to the bank was on estimate basis without any actual physical verification and the same was not supported by books of account. We find there is evidence to show that stock declared to the Income-tax Department was supported by books of account. No detailed inventory was also available in the statement made to the bank. Except a mere value declared for overdraft purposes to the bank, there were no detailed items of stocks in support of the declared value. It was also pointed out that there was no physical verification of stock, either by the assessee or the bank at the time of furnishing the stock statement. The Tribunal as well as C.I.T.(A) given a concurrent finding that the assessee declared closing stock for assessment purpose which is based on actual physical verification. There is enough materials available on record and the conclusion reached by the Tribunal is based on valid materials and evidence. In view of the same, there is no basis to treat the difference in value as the assessee's under-valuation of stock or undisclosed income. The Tribunal also rightly followed the principles enunciated by this Court judgment reported in 236 ITR 340 in the case of CIT Vs. SRI PADMAVATHY COTTON MILLS LTD.

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6. In view of the foregoing reasons, we are of the view that there is no error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence, we answer the questions of law in favour of the assessee and against the Revenue and the tax case is dismissed. No costs.

Tr/km

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. THE INCOME TAX APPELLATE
TRIBUNAL
C BENCH
CHENNAI

2. THE COMMISSIONER OF
INCOME TAX APPEALS III
MADRAS - 34

3. THE DEPUTY COMMISSIONER
OF INCOME TAX SPECIAL RANGE III
MADRAS 34

4. THE COMMISSIONER OF
INCOME TAX, CHENNAI

5. THE ASSISTANT REGISTRAR
INCOME TAX APPELLATE TRIBUNAL
RAJAJI BHAVAN III FLOOR
BESANT NAGAR
CHENNAI 90

SR (CO)
NM(27.11.2006)

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